

Securities and Exchange Commission

§ 270.18f-2

Act provided such senior security representing indebtedness is (1) not convertible into, exchangeable for, or accompanied by an option to acquire any equity security; (2) fully guaranteed as to timely payment of all principal and interest by the Small Business Administration and backed by the full faith and credit of the United States; and (3) subordinated to any other debt securities not issued pursuant to this section or, if such security is not so subordinated, that such security, according to its own terms, will not be preferred over any other unsecured debt securities in the payment of principal and interest: *And further provided*, That all other debt securities then outstanding issued by such small business investment company were issued as permitted by § 270.18c-1 or this section.

(b) Any security issued and sold as permitted by paragraph (a) of this section shall be deemed for purposes of § 270.18c-1 to be privately held by the Small Business Administration and for purposes of § 270.18c-1 shall not be deemed to be publicly held outstanding indebtedness.

(c) The issuance or sale of any security as permitted by paragraph (a) of this section shall not be deemed to be a sale to any person other than the Small Business Administration by any small business investment company licensed under the Small Business Investment Company Act of 1958 which is exempt from any provision of the Investment Company Act, if such exemption is conditioned on such company not offering or selling its securities to any person other than the Small Business Administration.

(Secs. 6(c), 38(a), 54 Stat. 800, 841, 15 U.S.C. 80a-6(c), 80a-37(a))

[37 FR 7590, Apr. 18, 1972]

§ 270.18f-1 Exemption from certain requirements of section 18(f)(1) (of the Act) for registered open-end investment companies which have the right to redeem in kind.

(a) A registered open-end investment company which has the right to redeem securities of which it is the issuer in assets other than cash may file with the Commission at any time a notification of election on Form N-18F-1 (§ 274.51 of this chapter) committing

itself to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90-day period to the lesser of

(1) \$250,000 or

(2) 1 percent of the net asset value of such company at the beginning of such period.

(b) An election pursuant to paragraph (a) of this section:

(1) Shall be described in either the prospectus or the Statement of Additional Information, at the discretion of the investment company, and

(2) Shall be irrevocable while this § 270.18f-1 is in effect unless the Commission by order upon application permits the withdrawal of such notification of election as being appropriate in the public interest and consistent with the protection of investors.

(c) Upon making the election described in paragraph (a) of this section, an investment company shall be exempt from the requirements of section 18(f)(1) (of the Act) to the extent necessary for such company to effectuate redemptions in the manner set forth in such paragraph.

(Secs. 7, 10, and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j, and 77s) and secs. 8, 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-29 and 80a-37))

[36 FR 11919, June 23, 1971, as amended at 48 FR 37940, Aug. 22, 1983]

§ 270.18f-2 Fair and equitable treatment for holders of each class or series of stock of series investment companies.

(a) For purposes of this § 270.18f-2 a series company is a registered open-end investment company which, in accordance with the provisions of section 18(f)(2) of the Act, issues two or more classes or series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series. Any matter required to be submitted by the provisions of the Act or of applicable State law, or otherwise, to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon less approved by the holders of a majority of the outstanding voting securities of

each class or series of stock affected by such matter.

(b) For the purposes of paragraph (a) of this § 270.18f-2, a class or series of stock will be deemed to be affected by such a matter, unless (1) the interests of each class or series in the matter are substantially identical, or (2) the matter does not affect any interest of such class or series.

(c)(1) With respect to the submission of an investment advisory contract to the holders of the outstanding voting securities of a series company for the approval required by section 15(a) of the Act, such matter shall be deemed to be effectively acted upon with respect to any class or series of securities of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter, notwithstanding (i) that such matter has not been approved by the holders of a majority of the outstanding voting securities of any other class or series affected by such matter, and (ii) that such matter has not been approved by the vote of a majority of the outstanding voting securities of such company, provided that if such a majority is required by State law or otherwise, such requirement shall apply.

(2) If any class or series of securities of a series company fails to approve an investment advisory contract in the manner required by paragraph (c)(1) of this section, the investment adviser of such company may continue to serve or act in such capacity for the period of time pending such required approval of such contract, of a new contract with the same or different adviser, or other definitive action: *Provided*, That the compensation received by such investment adviser during such period is equal to no more than its actual costs incurred in furnishing investment advisory services to such class or series or the amount it would have received under the advisory contract, whichever is less.

(d) With respect to the submission of a change in investment policy to the holders of the outstanding voting securities of a series company for the approval required by section 13 of the Act, such matter shall be deemed to have been effectively acted upon with

respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter, notwithstanding (1) that such matter has not been approved by the holders of a majority of the outstanding voting securities of any other class or series affected by such matter, and (2) that such matter has not been approved by the vote of a majority of the outstanding voting securities of such company: *Provided*, That if such a majority is required by State law or otherwise, such requirement shall apply.

(e) The submission to shareholders of the selection of the independent public accountant of a series company required by section 32(a) (of the Act) shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f-2.

(f) The submission to shareholders of a contract with a principal underwriter of a series company required by section 15(b) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f-2.

(g) The submission to shareholders of nominees for election as directors required by section 16(a) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f-2.

(h) For the purposes of this § 270.18f-2 a “majority of the outstanding voting securities” of a class or series, (1) when used with respect to a matter required by any provision of the Act to be submitted to the outstanding voting securities of a series company, shall have the same meaning as a “majority of the outstanding voting securities of a company” as defined in section 2(a)(42) of the Act; and (2) when used with respect to any other matter required to be submitted to the outstanding voting securities of a series company, shall mean the lesser of (i) the minimum vote of the outstanding voting securities of a company required by applicable State law or other applicable requirement, or (ii) the minimum vote specified by paragraph (1) of this paragraph (h), unless State law requires approval of such matters by a specified percentage of the outstanding voting

Securities and Exchange Commission

§ 270.18f-3

securities of a particular class or series, in which case, State law shall apply.

(Secs. 6(c), 13, 15(a), 15(b), 16(a), 18(f)(2), 32(a), 54 Stat. 800, 811, 812, 813, 817, 838, 841, 15 U.S.C. 80a-6(c), 80a-13, 80a-15(b), 80a-16(a), 80a-18(f)(2), 80a-31(a), 80a-37(a), Pub. L. 91-547, 84 Stat. 1421)

[37 FR 17386, Aug. 26, 1972]

§ 270.18f-3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a-18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a-18(f)(2)) whose shares are registered on Form N-1A [§§ 239.15A and 274.11A of this chapter] ("company") may issue more than one class of voting stock, *provided that*:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, un-

derwriter, or any other provider of services to the company.

(c)(1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company ("relative net assets");

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided that* the company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each share without regard to class, *provided that* the company is a Daily Dividend Fund that maintains the same net asset value per share in each class; that the company has received undertakings from its adviser, underwriter, or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; and that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, *provided that* a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net income daily, including any money market fund that